IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 520 OF 2007

IN

NOTICE OF MOTION NO. 3595 OF 2005

IN

SUIT NO. 3688 OF 1996

Smt.Umarani D. Poddar.... ... ... Appellant.
Versus
Smt.Shantidevi Jhuria & Ors.. ... Respondents.

Mr.Snehal Shah i/by M/s.L.J.Law for the Appellant.
Mr. P.K.Dhakephalkar for Respondent No.1.
Mr. D.R.Jhuria for Respondent No.4.
Ms. S.M.Dandekar, AGP, for Respondent No.5.

CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

DATED : 28TH AUGUST, 2007.

P.C.:

We have heard the learned Counsel appearing for the parties. The present appeal is directed against the order dated 22nd June, 2007 passed by the learned Single Judge in Notice of Motion No. 3595 of 2005 in Suit No. 3688 of 1996 between the parties.

2. It is not necessary for us to refer to the facts in greater detail giving rise to the present appeal. Suffice it to note that by the impugned judgment, the

learned Single Judge found that Deed of Confirmation was meaningless document and the suit of the plaintiff was, therefore, not maintainable. The argument raised before us is that even if the document is not admissible in evidence, the plaintiff in the suit was entitled to prove her case in accordance with law and particularly when the issues have already been framed. Further, it is contended that even if the impugned order is taken to be an order within the scope of Order VII rule 11 of the Code of Civil Procedure, even then the plaint could not be rejected and consequently suit be dismissed on the ground that the particular document placed on record was inadmissible in evidence.

3. During the course of hearing, the learned Counsel appearing for the parties agree that the appeal could be disposed of in terms of the following directions. The agreed terms are :

(a) The impugned order dated 22nd June, 2007 be set aside.

(b) The observations made in the impugned order would not be of any effect in the subsequent proceedings, which may be taken

out during the progress of the suit before the learned Single Judge.

(c) The issues have already been framed and Issue No.6 is agreed to be treated as a preliminary issue. The parties will be at liberty to make a request to the learned Single Judge to try or deal with the said issue at the first instance treating it as a preliminary issue.

(d) Further, that the matter may be dealt with expeditiously.

4. In view of the agreed terms, we dispose of the appeal in the above terms. However, it will be for the learned Single Judge to deal with the request of the parties for expeditious hearing.

5. The appeal is disposed of, accordingly. However, the parties are left to bear their own costs.

Sd/-

CHIEF JUSTICE

Sd/-

DR.D.Y.CHANDRACHUD, J.